Rolligon Corporation and Oil, Chemical and Atomic Workers International Union, AFL-CIO. Case 23-CA-8569

February 8, 1982

DECISION AND ORDER

By Chairman Van de Water and Members Jenkins and Hunter

Upon a charge filed on July 1, 1981, by Oil, Chemical and Atomic Workers International Union, AFL-CIO, herein called the Union, and duly served on Rolligon Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 23, issued a complaint on July 9, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on January 12, 1981, following a Board election in Case 23-RC-4758, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about March 4, 1981, the Union requested that Respondent provide certain relevant and necessary information concerning the unit employees and that commencing on June 3, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On July 16, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On October 13, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on October 21, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent

has not filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

The complaint alleges in pertinent part that following a Board-conducted election in which a majority of ballots were cast for representation by the Union, on January 12, 1981, the Board certified the Union as the exclusive bargaining representative of an appropriate unit of Respondent's employees.² Further, the complaint alleges that on or about March 4, 1981, the Union requested that Respondent provide certain relevant and necessary information concerning unit employees and that commencing on June 3, 1981, and continuing to date, Respondent has refused, and continues to refuse, to recognize, meet, and bargain collectively with the Union as the collective-bargaining representative of an appropriate unit of Respondent's employees. Respondent's answer admits the essential elements of the complaint; however, Respondent denies that the Union is the duly designated exclusive representative of an appropriate unit of its employees, that the information requested by the Union is necessary and relevant, and that by refusing to bargain and provide the above information it has violated Section 8(a)(5) and (1) of the Act. Respondent admits that it has refused to recognize, meet, and bargain with the Union in order to test the Board's certification.

Notwithstanding Respondent's contention, the General Counsel submits in his Motion for Summary Judgment that the Board properly certified the Union as the collective-bargaining representative of Respondent's employees and that Respondent has failed to present any evidence indicating that the Board erred in the underlying representation case.³ It thus appears that Respondent is attempting to relitigate issues fully litigated and finally determined in the representation proceeding.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding al-

¹ Official notice is taken of the record in the representation proceeding, Case 23-RC-4758, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems. Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

² 254 NLRB 22.

³ We also agree with the General Counsel that the information sought by the Union is clearly information that the Board has traditionally found to be relevant and necessary to a union's role as bargaining representative. In the absence of any showing that the production of such information is not necessary or relevant to the Union's collective-bargaining responsibilities, we do not find that Respondent's refusal to provide the requested information raises a question necessitating a hearing.

leging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.⁴

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

1. THE BUSINESS OF RESPONDENT

Respondent is a Texas corporation with its principal office and place of business located in Stafford, Texas, where it is engaged in the manufacture of off-road vehicles and tires. During the past 12 months, a representative period, Respondent purchased products, goods, and materials from firms located outside the State of Texas valued in excess of \$50,000, which products, goods, and materials were shipped from points outside the State of Texas directly to Respondent at Stafford, Texas.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Oil, Chemical and Atomic Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including draftsmen and parts department em-

ployees, employed at the Company located at 10635 Brighton Lane, Stafford, Texas; but excluding all professional employees, purchasing assistants, inventory control, customer services, and payroll clerks, office clericals, leadsmen, supervisors, guards and watchmen as defined in the Act.

2. The certification

On May 10, 1979, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 23, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on January 12, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about March 4, 1981, and at all times thereafter, the Union has requested and is requesting that Respondent provide relevant and necessary information concerning the employees in the above-described unit. Commencing on or about June 3, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the

⁴ See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

- 1. Rolligon Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. Oil, Chemical and Atomic Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
- 3. All production and maintenance employees, including draftsmen and parts department employees, employed at the Company located at 10635 Brighton Lane, Stafford, Texas; but excluding all professional employees, purchasing assistants, inventory control, customer services, and payroll clerks, office clericals, leadsmen, supervisors, guards and watchmen as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
- 4. Since January 12, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
- 5. By refusing on or about June 3, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, and by refusing to provide relevant and necessary information requested by the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

- 6. By the aforesaid refusal to bargain, and refusal to provide relevant and necessary information, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
- 7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Rolligon Corporation, Stafford, Texas, its officers, agents, successors, and assigns, shall:

- 1. Cease and desist from:
- (a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Oil, Chemical and Atomic Workers International Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees, including draftsmen and parts department employees, employed at the Company located at 10635 Brighton Lane, Stafford, Texas; but excluding all professional employees, purchasing assistants, inventory control, customer services, and payroll clerks, office clericals, leadsmen, supervisors, guards and watchmen as defined in the Act.

- (b) Refusing to provide relevant and necessary information requested by the Union.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.
- 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:
- (a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.
- (b) Provide the relevant and necessary information requested by the Union.

- (c) Post at its Stafford, Texas, facility copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 23, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.
- (d) Notify the Regional Director for Region 23, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and

other terms and conditions of employment with Oil, Chemical and Atomic Workers International Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to provide relevant and necessary information requested by the above-named Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees, including draftsmen and parts department employees, employed by us at 10635 Brighton Lane, Stafford, Texas; but excluding all professional employees, purchasing assistants, inventory control, customer services, and payroll clerks, office clericals, leadsmen, supervisors, guards and watchmen as defined in the Act.

ROLLIGON CORPORATION

⁵ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."